

Response to non-final Office Action dated September 24, 2008

Response dated: December 23, 2008

REMARKS/ARGUMENTS

Claims 1-4, and 7-35, and new claims 36-39 are pending in the application.

Claims 1-4, 7-15 and 32-33 have been withdrawn pursuant to a restriction requirement.

Reconsideration and a withdrawal of the rejections are respectfully requested in view of the above amendments and the following remarks.

New claims 36-39 have been presented in view of the Examiner's comments in the Office Action, in particular, noting certain distinctions argued by Applicant to be part of the Applicant's invention, but not explicitly presented in the claim language.

Applicant has presented distinguishing features through the amendments made to the claims (see, e.g., claims 16 and 26), and in the newly presented claims 36-39. The features of the claims are discussed below in the remarks responding to the rejections.

Reconsideration and allowance of the claims is hereby requested.

Claims 29-30 and 34-35 stand rejected under 35 USC 112 as failing to comply with the written description requirement. This rejection is respectfully but strenuously traversed.

The Office Action considers that claim 29 recites "the shells" in line 8, and that there is a lack of antecedent basis for this recitation. Applicant has amended claim 29 to provide the proper antecedent basis for the claimed language.

Claim 30 has been rejected based on the recitation that the "shell is in one of more parts, which are combined..." Applicant has amended claim 30 to recite that each shell is in at least two parts.

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For the reasons set forth above and the amendments made to claims 29-30, the section 112 rejection is believed to be obviated. Reconsideration and a withdrawal of the rejection is hereby respectfully requested.

Claims 16, 19-21, and 26-31 stand rejected under 35 U.S.C. 102(b) as being anticipated by Lampi et al. (US 5,465,654). This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is respectfully requested.

Applicant's invention is not disclosed or suggested by Lampi. The Office Action contends that Lampi teaches a method for frying foods (col. 5, line 2) by providing a shell with two plates joined along their edges by a hinge (citing to fig. 1, numbers 10-12), a first open configuration where the shell is loaded with food (fig. 1: col. 7, lines 4-6), a closed configuration used during cooking (fig. 2: col. 7, lines 6-12), frying the food by placing the shell in a convection cooking apparatus and immersing the shell in a cooking media such as hot air (col. 7, lines 49-53), maintaining the air separate from the shell interior due to the closed shell (fig. 2), inherently shaping the pancake and waffle batter during cooking (col. 5, line 45), the shell being made from highly-conductive materials (col. 5, line 31), and finally contending that the shell has a groove for injection of the batter from an extrusion device such as a syringe (col. 5, lines 44-54: fig. 3, number 16-17).

Applicant respectfully traverses the rejection with respect to Lampi. Applicant's present invention is distinguishable over Lampi. Lampi relates to a pan and lid for use in forced air convection ovens (see col. 3, lines 37-45, and see claim 1 of Lampi which defines the invention as "a cooking container for use in a convection oven wherein high

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temperature air is circulated at high speed around said cooking container..."). The Applicant's present invention relates to and recites a method of cooking that utilizes a shell with a first plate and a second plate. Applicant also recites that a second environment containing cooking media is provided. Lampi does not provide any cooking media in its environment. However, it appears from the Office Action that the Examiner considers the hot air of the oven to be the cooking media. Applicant therefore has amended claim 16 to more particularly recite that the cooking media comprises a liquid cooking media. Accordingly, Applicant's method, as now recited in claim 16 recites liquid cooking media.

The Applicant's method also discusses and recites placing the shell containing the food desired to be cooked in a frying apparatus, and further specifies that the frying apparatus comprises the second environment and that this second environment contains liquid cooking media. This is in contrast to Lampi's disclosure of a pan for use with forced air convection ovens (see Lampi abstract and citations above). Lampi's disclosure is not of frying or use of a frying apparatus in accordance with Applicant's method. This is another reason Applicant's present invention is not disclosed or suggested by Lampi. Rather, the frying mentioned in Lampi is actually the opposite of what Applicant's method provides. According to Lampi, a forced air convection oven is used, so Lampi's reference to "frying" would disclose to one of ordinary skill in the art that the frying medium would be placed inside the pan with the food to be cooked.

The cooking containers or pans embodied in this invention enable a wide variety of foods, in convenient portion sizes, to be baked,

fried, sautéed, or braised in quantity in forced-air convection ovens.

(Lampi, col. 7, lines 49-52)

This disclosure and teaching is contrary to the Applicant's method where the frying media is liquid that is in a second environment, outside of the food containing environment. For these reasons, Lampi fails to disclose or suggest the Applicant's claimed method.

In addition, there are other reasons why the Applicant's method, as set forth in claim 16, is not anticipated by Lampi. Claim 16 also recites wherein said first plate and said second plate are brought together to enclose said food to be cooked. Applicant's claim 16 therefore includes a positive step of bringing together these plates in order to enclose the food. Lampi, recites something different. Lampi has been cited for inherently shaping pancake and waffle batter during cooking, as the Office Action relies on col. 5, line 45 in the disclosure of Lampi. However, this embodiment of Lampi relates to and discusses Lampi's Fig. 3 which is the embodiment that discloses pourable ingredients such as batter, the alleged teaching which is relied on as a basis for the rejection in the Office Action.

However, even considering Lampi, the use of batter is not disclosed to one ordinary skill in the art to be accomplished to fill the Lampi pan in the manner provided by Applicant where a first plate and a second plate are brought together to enclose the food to be cooked. Rather, the Lampi pan is "provided with a closable 'window' (16-17) located at the side of the pan near the hinge (detail A-A₁)" (col. 5, lines 47-49). Rather, contrary to Applicant's invention, in Lampi, what is disclosed is that what the rejection

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considers to be a disclosure of "shells" (namely the Lampi pan 10 and lid 11) are already closed before the food to be cooked is placed into them. Applicant's claimed method recites doing the opposite. Lampi, accordingly seeks to "serially inject the appropriate amount of batter into each pan, close the window, insert the rack into the oven, and initiate the baking cycle". Therefore, Lampi has already brought together the pan 10 and lid 11 prior to injection of the batter. This is in stark contrast to how the Applicant's method is carried out and is yet another distinction between the present invention and Lampi. This is a further supporting reason as to why the Applicant's present invention is not taught, suggested or disclosed by Lampi.

Furthermore, claim 16 has been amended to more particularly distinguish the invention. The method includes placing food in an environment, and now recites that that first environment in which the food is placed is a food containing environment being formed in part by the groove of said first plate and in part by the groove of said second plate, the step of placing said shell in a second configuration including bringing together said first plate and said second plate so that the first plate groove and the second plate groove define a space within which the food placed in said shell may be cooked.

Claim 20 depends from claim 16 and further particularizes Applicant's method by reciting that the method provides food approximating the shape of the shell after cooking. Considered with claim 16, Lampi does not disclose the invention.

Furthermore, Applicant's claim 26 recites a method where the first plate and second plate are hingeably connected along an edge thereof and that the first and second

plates are swingably brought together (i.e., the hinging). This feature also is not suggested or disclosed by Lampi.

NEW CLAIM 36:

In addition, Applicant has presented new claim 36. New claim 36 not only is distinguishable over Lampi, for the above reasons, but for additional reasons. New claim 36 recites that there is provided a shell having a first plate with one outer edge and one inner edge and second plate with an outer edge and an inner edge and that when the plates are brought together the first plate outer edge engages with the second plate outer edge and the first plate inner edge engages with the second plate inner edge. This further supports and distinguishes the Applicant's present invention where a shell is placed in the second configuration which forms an enclosure comprising the first environment which is a food containing environment. This is different than Lampi which merely brings a pan and lid together, and not a configuration with outer edges and inner edges of plates that respectively engage.

NEW CLAIM 37:

New claim 37 depends from new claim 36 and recites two edges of each plate, an inner edge and an outer edge, where the inner edges are radially inward relative to the outer edges. The Applicant's method involves bringing the first plate and second plate together which involve bringing the inner edges and outer edges of the first and second plate together. Lampi fails to disclose or suggest such an arrangement.

NEW CLAIM 38:

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Claim 38 also distinguishes the Applicant's invention for the above reasons in support of the patentability of claim 16 as well as for additional reasons. Claim 38 recites a method which involves placing food to be cooked within the shell prior to placing the shell in a second configuration. Lampi, on the other hand recites that the food (which the Office Action refers to as batter) is to be placed into the Lampi pan after the parts (10, 11) are brought together, through injection of the batter into a hole or slot (see 16, 17). Applicant's claimed method is not disclosed or suggested by Lampi.

For these additional reasons, new claims 36, 37 and 38 further distinguish the Applicant's present invention and each recites a method that is not disclosed or suggested by Lampi et al.

Claims 16-20 and 26-28 stand rejected under 35 USC 103(a) as being unpatentable over Guyon et al. (U.S. 2,244,193) in view of Wallard (U.S. 3,831,508). This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection are hereby respectfully requested.

Applicant's invention is not obvious over the cited references. Applicant has discussed the reasons above why Lampi does not disclose or suggest the Applicant's present invention. First, for these same reasons, the Applicant's invention is not obvious even in view of the combination of Guyon et al. and Wallard. In addition, Applicant distinguishes the present invention for the reasons below.

Claim 16 has been amended to more particularly distinguish the Applicant's present invention. The method of claim 16 recites that the second configuration is attained by bringing together the first plate and second plate. When that is done,

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according to the Applicant's present invention, an enclosure is formed and comprises a first environment which is the food containing environment. That food containing environment is defined by a groove of the first plate and a groove of the second plate. Therefore, the present invention is further distinguishable over the combination of Guyon and Wallard in that there is not disclosed in those references a method which creates the food containing environment by the first plate having a groove and a second plate having a groove, and where the plates are brought together so that the grooves form this food containing environment.

Wallard's "hinge" merely provides a flat cover which is disposed over a pan. Guyon, provides a lid and pan which are screwed together. Applicant's method involves placing the shell in the second configuration, as previously discussed, and also provides the food containing environment which the food to be cooked occupies and constructs that food containing environment by forming an enclosure with grooves of a first plate and a second plate being brought together. Neither of the references discloses the features of Applicant's method.

In addition, new claims 36, 37, and 38, for the reasons previously discussed regarding the response to the Lampi rejection (above), also further distinguish the present invention over the cited references, including Guyon and Wallard. Again, regarding new claim 36 and 37, bringing together the inner edges and outer edges of the first and second plates, respectively, is not taught, suggested or disclosed by Guyon and Wallard and the combination of these references does not result in the Applicant's present method. Further, the bringing together of the edges in Applicant's claimed method forms the

second configuration of the shell which is the food containing environment that contains the food to be cooked.

In addition, new claim 39 has been added and recites that the weight of the first shell and second shell are sufficient to provide submerging of the shell within the liquid cooking medium. Accordingly, new claim 39 provides the step of wherein providing a shell includes providing said first plate and said second plate having a weight sufficient to submerge said shell when said food is placed within said shell and when said shell is in a second configuration within said cooking media of said frying apparatus so that said shell weight acts to submerge said shell. In response to Applicant's prior comments, the Examiner indicated that Applicant had pointed out this feature in an effort to distinguish the Applicant's present invention, but that this feature was not recited in the claims. Applicant has presented new claim 39 to include this important feature of the Applicant's invention which facilitates the use of Applicant's method as disclosed and claimed herein. New claim 39 is fully supported by the Applicant's specification. (See p. 4 last paragraph, p. 5, first paragraph, where Applicant discusses that the shells in various embodiments may be constructed so as to be heavy enough intrinsically or through additional weighting to displace oil, either by itself or with the addition of dough.) Accordingly, the invention of new claim 39 is distinguishable over the cited references.

Guyon et al. relates to cooking of discrete food items, such as meats (e.g., hamburger), fish, fowl (see Guyon et al. at col. 3, lines 31-43), and discuss uniformly cooking these foods (id.). Guyon et al. fails to disclose or suggest cooking of dough. Even the combination of references, as proposed in the Office Action, not only is

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deficient for the above stated reasons, but also for a lack of teaching of cooking dough in the first place, as the Applicant's inventive method provides, as well as the failure of the references to teach or disclose other steps and features claimed by Applicant.

The proposed combination of the two references here is improper, as the function of the references would need to be destroyed in making the combination. References are not properly combinable if their combination would destroy the very function of the reference. Though Wallard is relied on for a teaching or disclosure of hinges, the Wallard disclosure does not, in fact, suggest hinges which would be applicable to the present invention, or for that matter would be used to modify Guyon et al. Wallard shows different applications for a screw type arrangement (see Figs. 1-3 of Wallard) verses a slide cover type arrangement (see Figs. 4-8 of Wallard) the slide cover arrangements being what the Examiner considers to be a "hinge", referring to figs. 9-12 of Wallard. However, the Wallard "hinge" is not shown on the circumferential egg cooking device 10 of Wallard. That device 10 teaches and utilizes threads, not hinges. Guyon et al., as previously pointed out in the Applicant's response to the prior Office Action, discloses the use of threads and not hinges. Therefore both, teachings of the references suggest threads, and not hinges.

Wallard would not even provide a teaching or suggestion of how it could be applied to Guyon since when Wallard's does show a circumferential device, Wallard's disclosure is to use threads, and not a "hinge". The items in Wallard are not even a "hinge", but rather, appear to comprise a cover 51 that detachably engages with its

rounded end 54 in an opening 53 of the envelope 45 or pan 46. The Wallard arrangement or "hinge" is linear, and would not be applied to Guyon et al.

Moreover, since the cited references relate to cooking meats and fish (and do not appear to mention dough), Guyon et al. is concerned with pressure building up, and therefore provides a pressure relief valve (17). One of ordinary skill in the art would not be led by Guyon et al. to provide a hinge of Wallard, since Guyon et al. discloses an apparatus that is designed to be lifted from a clamping force of a clamp (22) in a pot or container (20) that contains the hot liquid (24). A holder or handle (18, 19) is provided in Guyon et al. for inserting into and lifting the device (10) out of the cooking liquid. A hinge, as disclosed and claimed in the Applicant's present invention, would not be desirable with Guyon et al., and one of ordinary skill in the art would not have been led to modify Guyon et al. by providing a hinge on its apparatus. If the Guyon et al. device were modified with the Wallard hinge, as proposed in the Office Action, the lifting of the Guyon et al. device would be impractical and actually would present a hazard (e.g., opening due to pressure). The handling of the Guyon et al. device, as per its own disclosure, would not have led one of ordinary skill in the art to modify Guyon et al. by providing a hinge, especially the hinge of Wallard.

As mentioned, the Wallard "hinge" is provided along a straight edge, not a circumference. There is no teaching how Wallard's hinging could even be applied to Guyon et al. Guyon et al.'s disclosure actually teaches away from hinging. Guyon et al. discloses screwing the top (10) and bottom (11) parts together, and discloses screw threads (12 and 13), and not hinges. In fact, not only does Guyon et al. fail to mention

hinges, it mentions specific components, clamping or fastening means, to hold the parts together. One of ordinary skill in the art would not have been led to consider hinging the Guyon et al. top and bottom parts, and especially in view the Wallard "hinge". Guyon et al. does not provide a disclosure or suggestion of applying a hinge as the Office Action proposes. In fact, Guyon et al. does disclose that "the top is removed from the bottom of the container so the contents in the bottom are freely accessible for eating or by removal therefrom." (Guyon et al., col. 3, lines 16-19). One of ordinary skill in the art looking at Guyon et al. and considering its disclosure and Guyon et al.'s desired purpose and function, so that food in the bottom is freely accessible for eating, would not seek to append the Guyon et al. top (which may contain grease or be hot), by hinging the top and bottom parts together. (Though it is conceivable that a plate may be hot, such as the bottom of Guyon et al., it would not have been prudent, let alone obvious, to seek to attach additional parts (such as the Guyon et al. top) where Guyon et al. specifically discloses use of its bottom part as a serving piece.

Therefore, for these additional reasons, it would not have been obvious to modify Guyon et al. with the Wallard hinge.

For these reasons, and those set forth above, the proposed combination of Guyon et al. and Wallard would not have been obvious. Reconsideration and a withdrawal of the rejection are respectfully requested.

Applicant's invention is not obvious over the cited references and should be patentable.

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Claims 16-21 and 26-30 and 34 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Dembecki (US 4,313,964) in view of Wallard. This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is respectfully requested.

Applicant's invention is not obvious over the cited references. Applicant has discussed the reasons why Wallard does not disclose or suggest the Applicant's present invention. First, for these reasons, the Applicant's invention is not obvious even in view of the further combination of Wallard with Dembecki.

Second, as Applicant previously pointed out in response to the prior Office Action, Dembecki relates to a device for making cone-shaped food products. Specifically, a conical mold is used to apply pressure to sandwich dough into the conical mold by fastening mold parts together. Dembecki must therefore unfasten the compressed mold parts in order to remove the food item product from the mold. Since, according to Dembecki the mold parts are fastened with a lock mechanism, it follows that the lock mechanism must be disabled or unlocked in order to remove the food. Contrary to the proposed combination of references relied on as a basis for rejection in the Office Action, one of ordinary skill in the art would not have been led to modify Dembecki with what the Office Action considers to be the "hinge" of Wallard, or a hinge at all.

Dembecki provides conical mold parts. One mold part is lowered onto another mold part in a vertical relationship. The mold parts are then clamped to compress the dough. Hinging the Dembecki conical mold parts would not have been an obvious modification, nor would it have been practical, as the conical mold parts would not function for the

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purposes of Dembecki. Hinging cones which are to be similar sized would not be practical given the geometry of the cone and the arc it needs to make to swing. The proposed modification is contrary to Dembecki. One of ordinary skill in the art would not have combined the teachings of hinging with Dembecki.

In addition Wallard actually is contrary to the teaching that the Office Action seeks to combine together as a basis for the rejection of the Applicant's invention. Wallard, when showing a conical or egg like shape, actually provides not a hinge, but screw threads (see Figs. 1-3 of Wallard). In addition, Dembecki would not seek a hinge for reasons Applicant previously provided. Those reasons are applicable here and equally valid even in view of the attempt to combine Wallard with Dembecki.

The filling of its mold, as disclosed by Dembecki, is another reason why the proposed combination and modification would be further contrary to Dembecki's disclosure. For example, if the filling material is to be placed on the top of Dembecki's lower cone mold part, the upper cone mold part must be lowered onto the lower cone mold part (or the lower cone mold part raised into the upper). This is what Dembecki discloses. (See Dembecki at col. 3, lines 32-39) Given the disclosure of Dembecki and its stated purpose, one of ordinary skill in the art would not have been led to modify Dembecki with the hinge disclosed by Wallard.

For the above reasons, claims 16-21, 26-30 and 34 are not obvious over Dembecki and Wallard, and the rejection should be withdrawn.

Claims 22-25 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Dembecki in view of Wallard, as applied above, and further in view of Aurio et al. (US

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20060099324) and Young et al. (US 6,048,564). This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is respectfully requested.

Applicant's invention is not obvious over the cited references. First, for the reasons set forth above, Wallard fails to disclose or suggest the present invention, alone or when combined with Dembecki as proposed in the Office Action.

Second, the further references of Aurio et al. and Young et al. would not render the present invention obvious. The Office Action considers the references to fill apparent deficiencies of Dembecki and Wallard (i.e., their failure to disclose konjac glucomannan, animal based protein and mixing). However, as set forth above (in connection with the Wallard and other references with which the Office Action proposed combining) none of the additional references provides a disclosure or suggestion of Applicant's claimed invention, and Applicant's conductive heating method is still not disclosed.

In addition, the Aurio et al. citation contains no reference to dough (which is Applicant's food to be cooked according to the embodiments of claims 22-25). Furthermore, the other additional cited reference, Young et al. contains references to animal fat but not to animal protein. Even the additional references would appear not only to fail to disclose the Applicant's invention, as claimed, but also, to be deficient of a teaching or suggestion even to make the combinations proposed in the Office Action.

For these reasons, and the reasons set forth above, reconsideration and a withdrawal of the rejection is respectfully but strenuously traversed.

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Claim 35 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Dembecki in view of Wallard, as applied above, and in further view of Henessey (US 6,508,166). This rejection is respectfully but strenuously traversed and reconsideration and a withdrawal of the rejection is respectfully requested.

Applicant's invention is not obvious over the cited references. Applicant has discussed the reasons why Dembecki and Wallard do not disclose or suggest the Applicant's present invention. For these reasons, the Applicant's invention is not obvious even in view of the further combination of Wallard and Dembecki with Henessey.

Second, there are additional reasons why the proposed combination with Dembecki and Wallard with Henessey would not be obvious. First, turning to Wallard, there is not a disclosure of linking a first shell with a second shell so that a plurality of food products may be cooked. Only a single "shell" (if it is even this) is shown. Applicant recites that each shell has first plate and a second plate (see claim 31 from which claim 35 depends). Claim 35 recites linking shells together (as opposed to linking the first and second plates of a shell together). Applicant has amended claim 34, from which claim 35 depends to more particularly articulate the invention by reciting that a plurality of shells are provided, and that the first shell is linked with a second shell.

None of the references discloses the linkage of the plurality of shells. Contrary to the Office Action, Dembecki does not disclose a c-shaped linkage for linking a first shell to a second shell. The reference in the Office Action to Dembecki appears to be referring to a bayonet type mount where tabs of a female mold part are locked onto a male mold

part (each mold part being for the same mold that would make one food product). There is no disclosure in Dembecki where the male and female mold parts of a first mold are linked with male and female mold parts of a second mold. The disclosure in Dembecki that provides for two molds appears not to link the molds, as Applicant discloses and claims, but rather, places the molds on a tray (47). Wallard provides for a single item, and not multiple linking of this or more of the single items. Accordingly, the cited references of Dembecki and Wallard fail to disclose any linkage of molds together in the first place. One of ordinary skill in the art would not have been taught to link the molds together.

One of ordinary skill in the art would not find a teaching or suggestion in Dembecki to link two of the cone molds to each other. Contrary to the Office Action, Dembecki uses a tray to hold multiple molds, not a linkage between the molds where one mold is linked to another mold. Nor would the references provide a suggestion of linking two molds together in the first place.

Even if, however, assuming that one sought to combine the teachings of Henessey with the other cited references, the present invention would still not be arrived at. Henessey discloses a tray (12) with a central raised portion (16) with openings (14) for receiving a head (30) of a donut maker (22). This is not a disclosure of the Applicant's invention. Henessey merely discloses placing two sets of a donut head and cover on a tray. The Applicant's claimed invention still is not taught or disclosed by the cited references.

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Applicant's claim 35 recites, as part of the Applicant's claimed method, linking, which includes placing one c-shaped linkage on a pin linkage, and where one pin linkage is carried on one shell and where a c-shaped linkage is provided on another shell. The inventive method of Claim 35 is not disclosed or taught by the cited references.

Applicant has also considered the prior art made of record and not relied upon as referred to on pages 7-8 of the Office Action and submits that for the same reasons as those set forth above the Applicant's present invention, as recited in the pending claims is not taught, suggested or disclosed by those references.

Reconsideration and a withdrawal of the rejection is respectfully requested.

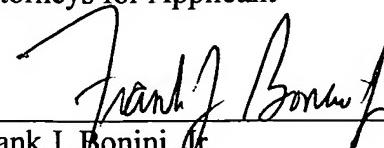
If further matters remain in connection with any of the rejections addressed herein, the Examiner is invited to telephone the Applicant's undersigned representative to hold an interview to discuss them.

If an extension of time is required, the Commissioner is requested to consider this a request for a petition for the appropriate extension of time.

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